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Message Text

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ACTION EUR-12

INFO OCT-01 IO-13 ISO-00 AID-05 CEA-01 CIAE-00 COME-00
EB-08 FRB-03 INR-07 NSAE-00 CIEP-01 SP-02 STR-04
TRSE-00 LAB-04 SIL-01 OMB-01 L-03 INT-05 FEA-01 ITC-01
OPIC-03 SS-15 NSC-05 /096 W
----------232151 014389 /73
R 231636Z FEB 77
FM USMISSION EC BRUSSELS
TO SECSTATE WASHDC 3098
INFO ALL EC CAPITALS 3175
USMISSION OECD PARIS
USMISSION GENEVA
USDEL MTN NGENEVA

C O N F I D E N T I A L EC BRUSSELS 01708

E.O. 11652: GDS
TAGS: ETRD, EEC
SUBJECT: EC ANTITRUST ACTION AGAINST US PHOSPHATE ASSOCIATIONS

REF: (A) 76 EC BRUSSELS 12558, (B) 76 EC BRUSSELS 9734

1. MISSION OFFICER MET WITH AURELIO PAPPALARDO, EC COMMISSION DIRECTOR OF INVESTIAGIONS FOR COMPETITION AFFAIRS (DG-IV) AND EC INVESTIGATORS TO DISCUSS STATUS OF EC INQUIRY INTO ALLEGED ANTI-COMPETITIVE PRACTICES OF US EXPORT CARTELS PHOSROCK AND PHOSCHEM. PAPPALARDO SAID THAT THE EC INVESTIGATION IS NEARING ITS COMPLETION AND FACTUAL FINDINGS SHOULD BE READY WITHIN A FEW WEEKS. INVESTIGATORS SAID THAT US FIRMS HAVE BEEN QUITE COOPERATIVE DURING THE INVESTIGATION BUT THE INVESTIGATION HAS BEEN COMPLICATED BY THE FACT THAT PHOSROCK AND PHOSCHEM DO NOT HAVE IDENTICAL MEMBERSHIP AND BECAUSE US PHOSPHATE COMPANIES ARE OFTEN INTEGRATED; THUS PRICES ARE HARD TO GET AT AND, WHERE SALES ARE NOT WITHIN INTE-
GRATED COMPANIES, PHOSPHATE CONTRACTS ARE APT TO BE OF RELATIVELY LONG DURATION. COMMISSION INVESTIGATORS HOPE
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THAT A MEETING WITH HIGH PHOSCHEM OFFICIALS IN PARIS WILL RESOLVE OUTSTANDING DATA PROBLEMS.

2. THE PRINCIPLE FINDING TO DATE IN THE INVESTIGATION IS THAT THE US EXPORTERS OF R PHOSPHATE ROCK (PHOSROCK) WERE PROBABLY OPERATING UNDER A MOROCCAN PRICE UMBRELLA IN SALES TO THE EUROPEAN MARKET AND IN FACT WERE UNDER-

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CUTTING MORROCCAN PRICES. THEREFORE, IT IS UNLIKELY THAT ANY DELIBERATE SQUEEZING OPERATION INVOLVING PHOSROCK AND PHOSCHEM WAS IN EFFECT. INVESTIGATORS STILL HAVE NOT YET DETERMINED WHETHER PHOSCHEM DELIBERATELY UNDER-PRICED ITS FERTILIZERS ON THE EUROPEAN MARKET, REGARDLESS OF THE PRICE OF ROCK, TO ELIMINATE THE EUROPEAN PHOSPHATE PROCESSING INDUSTRY.

3.PAPPALARDO SAID THAT THERE IS VIRTUALLY NO LIKELI-HOOD OF THE EC PURSUING THIS CASE UNDER ARTICLE 86 (ABUSE OF DOMINANT POSITION) BUT, HE SAID , ARTICLE 85 WOULD PROHIBIT ANY CARTEL BEHAVIOR WHICH SET PRICES ON THE EUROPEAN MARKET, WHETHER OR NOT THE TRADE EFFECT WAS SUBSTANTIAL. (IN THAT RESPECT US DOMESTIC PRICES BECOME IRRELEVANT.) HE INDICATED THAT THE COMMISSION'S CASE ON THIS GROUND MIGHT DEPEND UPON DG-IV'S EFFORTS TO OBTAIN COPIES OF THE PHOSCHEM STATUTES. PAPPALARDO EXPLAINED THAT AFTER THE FINDINGS WERE COMPLETED, HIS DIRECTORATE WOULD PASS THEM TO ANOTHER DIRECTORATE WITHIN DG-IV WHICH WOULD MAKE A LEGAL APPRAISAL OF THE FINDINGS. IF AT THIS POINT THE DG-IV DECIDED THAT IT DID NOT WANT TO DROP THE CASE, IT WOULD ANNOUNCE ITS DECISION TO THE COMPANIES WHO WOULD HAVE A CHANCE TO RESPOND TO ALLEGATIONS. AFTER THAT, THE CASE COULD GO TO THE COURT OF JUSTICE FOR DECISION. ALTHOUGH PAPPALARDO FELT THAT ARTICLE 85 COULD BE APPLIED TO ALL WEBB-POMERENE ASSOCIATIONS, HE DID NOT SAY THAT A DECISION AGAINST PHOSCHEM WOULD LEAD TO A GENERAL ATTACK ON WEBB-POMERENE COMPANIES.
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4. COMMENT: DG-IV'S DIRECTOR GENERAL, WILLY SCHLIEDER, HAS BEEN UNDER PRESSURE FROM SOME COMMISSIONERS TO PURSUE THIS CASE BUT HAS GIVEN THE MISSION THE IMPRESSION, ON SEVERAL OCCASIONS, THAT HE WAS NOT ANXIOUS TO OPEN UP THE QUESTION OF US WEBB-POMERENE ASSOCIATIONS. AT PRESENT, SCHLIEDER IS ASKING TO BE ALLOWED TO RETIRE FOR HEALTH REASONS RATHER THAN ACCEPTANOTHER POST WHICH THE COMMISSION IS PRESSING HIM TO TAKE (DIRECTOR OF LEGAL SERVICES). WITH SCHLIEDER'S REDUCED ROLE IN COMPETITION POLICY, THERE IS NO CLEAR INDICATION OF HOW THE COMMISSION INTENDS TO PURSUE THIS CASE. PAPPALARDO SEEMED GENUINELY IGNORANT OF THE INVESTIGATORS' FINDINGS THUS FAR AND VERY VAGUE ON THE LEGAL APPRAISAL WHICH DG-IV WAS LIKELY TO GIVE. THIS MAY BE AN INDICATION THAT HE ATTACHES A RELATIVELY LOW PRIORITY TO COMPLETING THE CASE.MORRIS

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